

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

EUGINE V. ELKINS,

Petitioner,

v.

JAMES R. KEY,

Respondent.

No. C16-5956 BHS-KLS

REPORT AND RECOMMENDATION

Noted for: December 30, 2016

Petitioner Eugene V. Elkins has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and an application to proceed in forma pauperis. Dkt. 1. Because petitioner appears to have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends the Court deny his application.

DISCUSSION

As a general rule, all parties instituting any civil action, suit or proceeding in a United States District Court must pay a filing fee. 28 U.S.C. § 1914(a). The Court may authorize the commencement of an action “without prepayment of fees and costs of security therefor, by a person who submits an affidavit that ... the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a)(1). Therefore, an action may proceed despite a failure to prepay

1 the filing fee only if leave to proceed in forma pauperis is granted by the Court. *See Rodriguez v.*
2 *Cook*, 169 F.3d 1178, 1177 (9th Cir.1999).

3 The Ninth Circuit has held “permission to proceed in forma pauperis is itself a matter of
4 privilege and not a right; denial of an informa pauperis status does not violate the applicant’s
5 right to due process.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir.1984) (*citing Weller v.*
6 *Dickson*, 314 F.2d 598, 600 (9th Cir.1963)). In addition, the Court has broad discretion to grant
7 or deny a motion to proceed in forma pauperis. *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th
8 Cir.1990); *Weller*, 314 F.2d at 600-601.

10 By filing a request to proceed in forma pauperis, petitioner is asking the government to
11 incur the filing fee because he allegedly is unable to afford the costs necessary to proceed with
12 his petition for habeas corpus. Petitioner’s application reflects that as of November, 2016, he
13 had average monthly receipts of \$189.73 and an average spendable balance of \$34.17. Dkt. 1, p.
14 3. The undersigned recognizes that the funds to which petitioner has access may not be great.
15 However, given the fact that a prisoner’s basic needs are provided for while he is incarcerated
16 and the minimal filing fee required to proceed with this action is \$5.00, it is not unreasonable to
17 expect petitioner to pay that fee from those funds.

19 CONCLUSION

20 Because petitioner appears to have sufficient funds to pay the filing fee, the undersigned
21 recommends that the Court deny his application to proceed in forma pauperis (Dkt. 1) and that
22 petitioner be directed to pay the \$5.00 filing fee.

24 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure
25 (“Fed. R. Civ. P.”), Petitioner shall have fourteen (14) days from service of this Report and
26 Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file

1 objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474
2 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed set
3 this matter for consideration on **December 30, 2016**, as noted in the caption.

4 **DATED** this 13th day of December, 2016.

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7 Karen L. Strombom
8 United States Magistrate Judge
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